IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-849

WOODMAR REALTY COMPANY, An Indiana Corporation, and OWEN W. CRUMPACKER,

Petitioner,

vs.

SAMUEL C. ENNIS & COMPANY, INC., SAMUEL C. ENNIS, MERCANTILE NATIONAL BANK OF INDIANA, As Executor Under the Last Will and Testament of Donald C. Gardner, Deceased, JOHN G. PHROMMER, HERSCHEL B. DAVIS, BEATRICE LEVIN, Executrix Under the Last Will and Testament of Charles Levin, Deceased, FLOYD R. MURRAY, EDMOND J. LEENEY and WALTER A. McCLEAN,

Respondents,

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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RESPONDENT'S BRIEF IN OPPOSITION TO
THE PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Rule 24(1) of this Court's rules permits a respondent to a petition for writ of certiorari to file an opposing brief "disclosing any matter or ground why the cause should not be reviewed by this court." On behalf of the respondents, we now undertake to present such a brief.

At the outset, we must admit that we have failed in our efforts to glean from the particular petition under consideration the precise ground or grounds urged by the petitioners as a justification for the allowance of the writ. The petition appears to be nothing more than a rambling outpouring of the petitioners' conceptions and recollections of the fortunes and misfortunes of the Woodmar Realty Company during its twenty-eight years of proceedings under the Bankruptcy Act. In addition, the petitioners have woven a tale into the petition of a massive conspiracy to defraud the Woodmar Realty Company of its assets during its many long years of captivity at the hands of the federal courts under the Bankruptcy Act - a conspiracy allegedly joined in and implemented by certain federal judges, attorneys, trustees in bankruptcy, realtors and others.

The only message which the petition appears to deliver with any clarity is the fact that the petitioners are dissatisfied with the decision of the Seventh Circuit Court of Appeals in this case. Otherwise, the petition is so weighted down with confusing and malicious verbiage as to justify its denial under this Court's Rule 23(4):

> "4. The failure of a petitioner to present with accuracy, breavity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

We do not believe that any useful purpose will be served if we permit ourselves to be drawn into the labyrinth of accusations, innuendos, half-truths, falsehoods and grumblings which characterize the petition. The issue at this juncture in the proceeding is whether the cause should be reviewed by this Court. We have attempted in this brief to limit our discussion to those considerations which are relevant to the determination of that issue.

SUMMARY OF ARGUMENT

The Court of Appeals was correct in holding that the state court action filed by the petitioner Woodmar Realty Company sought to raise issues which had been previously adjudicated during the Woodmar Realty Company's bankruptcy proceedings, and that the bankruptcy court was in error when it refused to enjoin the prosecution of the state court action in order to protect or effectuate the judgments of the bankruptcy court.

ARGUMENT

The decision rendered in this case by the Court of Appeals was centered primarily around the relitigation exception contained in 28 U.S.C. §2283, hereinafter referred to as "§2283," which reads as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The Court of Appeals held, of course, that §2283 not only permitted but necessitated the injunctive relief sought by the respondents in the District Court.

It becomes readily apparent from even the most superficial research efforts that §2283 has in recent years been a frequent object of interpretation and application by the federal courts. Equally apparent is the fact that the Court of Appeals did not engage in the blazing of any new trails with respect to the nature of the issues before it or the manner in which it disposed of those issues. There is nothing new or novel about the holding of the Court of Appeals.

Moreover, we are not aware that the holding in this case by the Court of Appeals is in conflict in any respect with any decision of any of the other Courts of Appeal or of this Court. Certainly, if such a conflict exists, no mention of it appears in the petition.

The case at hand represents a classic example of the need for the relitigation exception in §2283. The agonies of the Woodmar Realty Company under the Bankruptcy Act spanned a twenty-eight year period commencing in 1941 and ending in 1969, starting with reorganization proceedings which were eventually converted into a

straight bankruptcy. Out of the ordeal came eight appeals to the Court of Appeals including three denials of certiorari by this Court. (See footnote, A.3)

During the entire period, Woodmar Realty Company was represented by attorney Owen W. Crumpacker, who with Woodmar Realty Company, is a petitioner in this proceeding. After the matter was converted into a straight bankruptcy, Mr. Crumpacker persistently exhibited an obsession for accusing practically everyone involved in the proceedings of fraud in one form or another, having as its common purpose the misappropriation of the assets of the Woodmar Realty Company. These accusations were from time to time duly examined by the District Court and the Court of Appeals and were found to be without foundation. By the time the proceedings were terminated in 1969 all issues raised by the allegations of fraud in the straight bankruptcy had been decided against the petitioners.

Five years later in September of 1974 Woodmar Realty Company, with Mr. Crumpacker as its attorney, filed an action in an Indiana state court against the respondents for $2,500,000.00. The complaint in that action sought to exhume all of the various fraud issues which had been laid to rest in the bankruptcy proceedings. It was the prosecution of this action which the respondents sought to enjoin before the District Court. The District Court sustained the petitioners' motion to dismiss with the observation that the respondents' defense of res judicata could be raised and considered by the Indiana state court. (A.11) This was no answer, however, to the respondents' contention, as stated in their complaint and brief in support of their motion for summary judgment, that the fraud

action in question could only be maintained by a trustee in bankruptcy. Otherwise, what would prevent the petitioners, in the event of a recovery, from ignoring the rights of the bankruptcy creditors and pocketing the money themselves?

It is true, in line with the District Court's ruling, that the respondents could have raised the doctrines of res judicata and collateral estoppel in the state court. Of course, if the state court had rejected the applicability of those doctrines the respondents' only recourse would have been to pursue appeals of the matter through the highest courts of Indiana and then, if necessary, to this Court. The relitigation exception contained in §2283 obviates the need for such an expensive and drawn out procedure which, incidentally, is not without its perils.

In Woods Exploration and Producing Co. v. Aluminum Co. of America, 438 F.2d 1286 (CA 5, 1971), the Court of Appeals of the Fifth Circuit agreed that the relitigation exception "prevents multiple litigation of the same cause of action and it assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review." (438 F.2d 1286, 1312)

In the more recent case of International Association of Machinist & Aerospace Workers v. Nix, 512 F.2d 125 (CA 5, 1975), that same court commented:

> "In these circumstances, a federal court need not stand idly by and hope that the state court perceives that

> the issues before it formed the basis of prior federal court litigation. Rather the federal court may intervene, pursuant to §2283, 'to protect or effectuate its judgments.'" (512 F.2d 125, 132)

Although bankruptcy is a subject which is entirely within the domain of federal law, and although the state court action in question, if pursued to a final disposition, would require the state court to invade an area pre-empted by federal law, the respondents concede that these circumstances alone would not afford a basis for the District Court's entry of an injunction against further pursuit of the state court action. Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970).

The case at hand, however, contains an additional ingredient. As the Court of Appeals observed, if the respondent Woodmar Realty Company were successful in the state court action, the bankruptcy court's order of distribution would be nullified. (A.6) In other words, a potential risk presented by the pending state court proceeding would be the destruction of the results of many years of effort on the part of the bankruptcy court. Obviously, Woodmar Realty Company's success in the state court action would leave the jurisdiction and authority of the bankruptcy court over the Woodmar Realty Company bankruptcy in a complete shambles.

Such a result, or even the risk of such a result, need not and should not be

tolerated by the bankruptcy court in view of the clear language of §2283. Congress has spelled out those circumstances under which a federal court may grant such an injunction. That such an injunction is "necessary and in aid of" the jurisdiction of the bankruptcy court and essential in order for the bankruptcy court "to protect or effectuate its judgments" is too obvious in this instance to be seriously questioned.

We believe that we should comment upon the petitioners' statement of the questions presented by the petition as set forth on page 2 of the petition. The first of those questions has been stated in the petition as follows:

> "Whether the limitations on the right of federal courts to enjoin state court litigation by virtue of U.S.C.A., Title 28, §2283, are abrogated by the re-litigation exceptions grafted on the statute by judicial interpretation under the ruling of the Seventh Circuit Court of Appeals complained of."

Obviously, the ruling of the Court of Appeals in this case "grafted" nothing on §2283. The relitigation exception was the work of Congress, not the Court of Appeals. The second of the questions presented as set forth in the petition is the following:

> "Whether the exception to the limitations placed on federal courts' power to enjoin litigation in a state court by 28 U.S.C.A. §2283 under the decision in Local Loan v. Hunt,

> (1934), 292 U.S. 234, 54 S.Ct. 695, 78 L.Ed. 1230 is broad enough to enjoin a former debtor in a twenty-eight year Chandler Act proceedings from bringing a damage suit against fiduciaries and their collegues for malicious abuse of process."

The foregoing question is incomprehensible. Section 2283 did not even exist in its present form at the time of the decision in Local Loan v. Hunt, supra, i.e., the relitigation exception was not added to §2283 until 1948, fourteen years after Local Loan v. Hunt. Moreover, for reasons not understood by us, the petitioners have chosen to refer to the Woodmar Realty Company as the "debtor" in the foregoing question and elsewhere in the petition instead of as the "bankrupt," the proper term. Frequently in the petition the petitioners have seemingly ignored the fact that ultimately the federal proceedings in question moved from reorganization proceedings into a straight bankruptcy. Finally, the state court action is characterized in the question as being one for "malicious abuse of process." A reading of the complaint filed in that action (set forth in part in the Appendix, pages A15 through A31), if one is energetic enough for such an accomplishment, reveals that the action was for fraud. However, regardless of the terminology used to characterize the action, it is clear that the issues which the complaint sought to raise were issues with which the bankruptcy court had dealt at one time or another during the course of the proceedings under the Bankruptcy Act.

The third of the questions presented,

as set forth in the petition, is the following:

> "Whether the dismissal of a petition to remove a court appointed trustee and trustee's attorney in a corporate reorganization proceeding on motion for want of facts constitutes an adjudication which can be the basis for ancillary jurisdiction in the federal court to enjoin state court proceedings instituted by the former corporate debtor in reorganization notwithstanding the limitation placed on federal courts under 28 U.S.C.A. §2283."

The foregoing question represents an effort to grossly distort the nature and scope of the issues actually presented by the petition. The ruling by the bankruptcy court on the petition filed by the bankrupt to remove the trustee and the trustee's attorney was but one of many rulings made by the bankruptcy court. The suggestion that this particular ruling constituted the adjudication which the respondents sought to protect when they filed a suit for injunctive relief in the District Court is merely typical of the distortions which permeate the petition. Obviously, if Woodmar Realty Company were successful with its state court action, the effect would be to undo a great deal more than merely the ruling on the petition to remove the trustee and the trustee's attorney.

We are at a loss to understand why the petitioners have laid so much stress upon that particular ruling. Perhaps the

reason stems from the fact that during the course of the Court of Appeals' affirmation of the ruling made by the bankruptcy court, the charges against the trustee and the trustee's attorney were found to have been made in "gross bad faith." In re Woodmar Realty Co., 294 F.2d 785, 789. In that decision, the Court of Appeals came down hard on Mr. Crumpacker because of his reckless and irresponsible charges of fraud.

We close with the comment that, although we pride ourselves in this country on the right of every litigant to have his day in court, we do so with an awareness that one's right to a day in court means nothing if the day in court settles nothing. The Woodmar Realty Company bankruptcy has been laid to rest. May it henceforth rest in peace.

CONCLUSION

For the reasons stated above, the respondents say that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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